

October 11, 2005



**TRANSCRIPT
October 11, 2005**

MONTGOMERY COUNTY COUNCIL

PRESENT

Thomas Perez, President
Phil Andrews
Howard Denis
Marilyn J. Praisner

George Leventhal, Vice President
Michael Knapp
Nancy Floreen
Steven A. Silverman
Michael Subin



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Council President PEREZ,

We do have a quorum here and have had people patiently waiting, including our person who is going to lead us in our invocation. Father Francis Kazista of St. John the Baptist Catholic Church in Silver Spring. Thank you very much for coming. Just hit that button there and thank you for coming.

Father Francis Kazista,

Almighty God, creator and sustainer of all things, send down upon the members of this Montgomery County Council and upon all our elected leaders the spirit of wisdom, charity, and justice, so that the steadfast purpose they may faithfully -- with steadfast just purpose they may faithfully serve in their offices to advance the well being of all people in this County. Father of all human beings, in the words of the Christian scriptures, you give us a vision of a holy commonwealth in which there is neither pain nor death and to which the nations of the world bring their glory. Behold and visit, we pray, this County, Montgomery County, Maryland, in which we live, and which is teeming with life and energy, constantly renew the ties of mutual regard, which we require for our civic life. Bless our leaders with the ability to discern the spirit of justice and truth. Enable all of our citizens to work together for the elimination of poverty, prejudice and oppression so that peace may prevail with righteousness and justice with order. And help all of us to work as citizens, to make our County the meeting ground of many cultures and races where men and women of different talents and backgrounds may find the fulfillment of their common humanity. To this, we, the citizens of Montgomery County say amen.

Council President PEREZ

Amen.

Council President PEREZ,

Thank you. Thank you for coming. Okay, let's turn to Councilmember Praisner, proclamation in recognition of White Cane Safety Day.

Councilmember PRAISNER,

It's my pleasure every October to acknowledge that in October we recognize the National White Cane Safety Day and it's always a pleasure, also, to have Debbie Brown with me. Debbie and I work together on the Pedestrian Safety Advisory Committee and she's a very active participant in those issues. Whereas on Friday, October 15, 2005, the National Federation of the Blind and the country will observe National White Cane Safety Day. And whereas the purpose of White Cane Safety Day is to raise public awareness of the white cane as a symbol of independence and freedom for blind people and to promote public awareness of the blind as equal and productive citizens. And whereas during this time, the public is reminded that persons carrying a white cane or using a guide dog are legally blind but have equal rights under the law to housing, lodging, amusement and public transportation. And whereas motorists should remember that the law requires drivers to exercise particular care when approaching



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1 blind persons and whereas it is also appropriate at this time to remind employers that
2 when blind persons receive proper instruction and genuine opportunity and support,
3 they can compete on equal terms with sighted persons and are, in fact, employed within
4 the broad spectrum of labor and the professions. Now, therefore be it resolved that the
5 Montgomery County Council hereby proclaims Friday, October 15, 2005, White Cane
6 Safety Day in Montgomery County and commends the efforts of the National Federation
7 of the Blind in this, its 64th year. And it's presented on the 11th day of October in the
8 year 2005 and signed by our Council President, Tom Perez. Debbie, if you come over
9 by the mic you can make some comments as I give you the proclamation.

10
11 Debbie Brown,

12 Okay, sure. All right, I have things for you, too. I have some books to pass out to each
13 of the Councilmembers and I want to thank you, especially Councilmember Praisner, for
14 doing this every year and White Cane Safety Day, the laws that have made people
15 aware of this, were mostly brought out back in the 1960s and they deal with, primarily
16 with walking around, the privilege of carrying a white cane or using a guide dog, but
17 those are the tools that we use for independence for going to work and doing all the
18 things that everybody does and takes for granted. So, we try to do this every year to
19 commemorate the rights and freedoms that we all have in this country to go and live our
20 lives as we choose in a responsible society, so, thank you all for this.

21
22 Councilmember PRAISNER,

23 Well, you're quite welcome, Debbie. Thank you. [applause] Thank you for continuing
24 your efforts and reminding us of this important issue.

25
26 Photographer

27 Thank you very much. Appreciate it.

28
29 Councilmember PRAISNER

30 Okay? Thank you, Debbie.

31
32 Debbie Brown,

33 My pleasure.

34
35 Councilmember LEVENTHAL,

36 Okay. Mr. President and members of the Council, our next proclamation is for Odonna
37 Matthews. Let me just say that I think we all appreciate that the costs for our healthcare
38 delivery system and our significant problem nationally of access to healthcare and
39 growing concern over healthcare problems, so much of that could be ameliorated if we
40 could simply concentrate earlier in life on better nutrition and fitness habits. And as
41 Chairman of the Health and Human Services Committee, I've tried to do the best I can
42 to support efforts in County government and in the community to promote better fitness
43 and nutrition, and later on this fall, the Health and Human Services Committee is going
44 to follow up on a resolution that this Council passed calling upon companies doing
45 business in Montgomery County to adopt food marketing practices that emphasize



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1 fitness and nutrition and communicate a healthy message rather than an unhealthy
2 message, which too many of our young people, especially, receive in the media. And I
3 really want to acknowledge and commend our local private sector participants in the
4 marketplace when they do this without prompting from the County Council. Not
5 necessarily that they need, not necessarily the companies are going to respond to the
6 resolution that we passed earlier this year, I hope they will. But Giant Food, for a long,
7 long time, has really been ahead of the curve, I think, in having on its staff, nationally
8 recognized experts in the area of good nutrition, and we all know Esther Peterson, who
9 for so many years was really a national leader in protecting the interests of consumers
10 and communicating a message that was in the public interest, even on behalf of her
11 private sector employer. And the Esther Peterson tradition has been carried on for the
12 last 33 years by Odonna Matthews, who I'm going to call up now. We really honor the
13 good work that Odonna Matthews has done, again, in the public interest, even as she
14 has worked on behalf of a leader in the private sector. But we appreciate every time one
15 of our private sector participants doesn't necessarily only think of profits, but thinks
16 about what is it that's going to keep a strong and healthy consumer base because we
17 know that the public health is also in the private interest. If consumers are healthy and
18 live longer, they're going to be shopping longer and buying more groceries over the
19 long-term and we just appreciate that over the years Giant Food has had Odonna
20 Matthews providing good consumer advice, good information, and really very, very
21 solid, with a strong scientific basis, information that consumers can trust. And so we're
22 offering this proclamation today to Odonna, but we also acknowledge that Giant Food
23 has had Odonna and has supported her efforts and so let me just read this
24 proclamation. Whereas Odonna Matthews was Vice President of Consumer Affairs for
25 550 Stop-n-Shop and Giant Food Stores on the East Coast, and is well-known in the
26 Washington area for her consumer messages on local radio and television stations as
27 well as in Giant's weekly circular. And whereas her predecessor and mentor, Esther
28 Peterson, Giant's first consumer advisor, laid the ground work for Giant's unique and
29 innovative consumer programs to promote health, food safety and smart shopping, and
30 Odonna Matthews continued to build on those programs and created many new ones.
31 And whereas Odonna Matthews started with Giant in 1970 as an intern to Esther
32 Peterson and became head of the department in 1977, Vice President in 1984, and
33 having left Giant and now works with the Food Marketing Institute Consumer Affairs
34 Committee as Chairman, and whereas throughout the years Odonna Matthews has
35 received many honors, among them the Outstanding Woman Award in 2004 from the
36 Southern Prince Georges County Business and Professional Women's Club and
37 receiving the N.M. Cohen Award, Giant's top recognition for outstanding service to the
38 Company. And whereas Odonna Matthew is the force behind the "Eat for Health"
39 program, a joint consumer education program on diet and cancer risk reduction with the
40 National Cancer Institute and the Consumer Education campaigns and recipe cards,
41 and whereas Odonna Matthews embodies many of the roles that have defined
42 consumer affairs over the past two decades, whether working with customers,
43 advocating for changes to Giant's business, or pioneering consumer programs.
44 Therefore be it resolved that the County Council of Montgomery County, Maryland



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1 honors and thanks Odonna Matthews for her exceptional record of achievement. [
2 applause] Okay, beautiful. Odonna, did you want to make some comments?

3
4 Odonna Matthews,

5 Yes, I'd certainly like to thank all the Council, Councilman Leventhal in particular for this
6 recognition. Certainly of my wonderful years at Giant, which I enjoyed extremely much
7 as well as all the County Councilmembers. We enjoy working with you and certainly all
8 of those, the customers that I've had a chance to interact with at Giant, certainly the
9 health and nutrition programs are probably the ones that I enjoy the most because I
10 learn so much. And I would say, too, that even though I am retiring, the programs will go
11 on. We have two nutritionists there that will continue to promote the My Pyramid and the
12 new kids messages that have just been released by USDA. So there are lots of
13 opportunities to continue the tradition that Esther started, that I had the privilege of
14 working on at Giant, and that will continue under my successor, Andrea. So, thank you
15 for all you do for our residents and I'm very proud to be a resident of Montgomery
16 County. Thank you very much.

17
18 Councilmember LEVENTHAL

19 Thank you, terrific. Thank you. [applause]

20
21 Council President PEREZ,

22 Okay, turning to general business. Announcements, Ms. Lauer, agenda and calendar
23 changes?

24
25 Ms. Lauer,

26 Consent calendar changes today, we're deferring "D" that will be rescheduled for next
27 week, it's the resolution concerning the non-competitive award status for CASA of
28 Maryland. We're adding action on a resolution to extend until January 9th of '06,
29 temporary Executive Regulation, 16-05T, Integrated Emergency Command Structure.
30 Legislative session, a couple of changes: Bill 29-05, we had a title change. It's now Bill
31 29-05 Condominiums - Conversion of Rental Housing. Bill, Expedited Bill 31-05 has two
32 additional sponsors, that's Personnel – Benefits - Prescription Drugs. In addition, we've
33 added Councilmembers Floreen and Andrews as sponsors. And then just a minor
34 correction, the PHED Committee considered the Consumer Protection Bill, not the
35 Public Safety Committee. And we do have a date for Workforce Housing. The
36 Workforce Housing items that we're introducing today will go to hearing on November
37 22nd at 7:30. Thank you.

38
39 Council President PEREZ,

40 Okay. Somebody in the audience is making a noise. I don't know id that's -- is that our
41 mic or-- Okay, I think we have the culprit! Okay. Let me turn, before we move to the
42 minutes, I know Mr. -- Councilmember Denis had wanted to mention something.

43
44 Councilmember DENIS,



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1 Thank you, Mr. President and I appreciate you recognizing me. I just want to say a few
2 words about the passing of one of the most significant people in the long history of
3 Maryland, my friend Louise Gore, who died last week at the age of 80. I worked for
4 Louise when she was a member of the House of Delegates and the State Senate 40
5 years ago. It's not generally known, but Louise sustained very serious injuries in an
6 automobile accident in Annapolis exactly 40 years ago, 1965. She was in the back seat
7 of a car that was driving along Compromise Street, right in front of where the Marriott
8 Waterfront Hotel is now. And the driver of the car, who was another delegate from
9 Montgomery County, was killed. A lawyer in Rockville by the name of Perry Doing.
10 Louise, who was in the back seat, was med evaced to shock trauma in Baltimore and
11 suffered permanent injuries of a certain kind. Fortunately, there were no head injuries.
12 And I mention that because Louise was in the House of Delegates then and she was
13 planning to run for the State Senate. She did run for the State Senate the following year
14 and because she couldn't get around to see people, she ingeniously came up with the
15 idea that people might want to come around and see her. And boy was she right! Her
16 campaign consisted of sending out, I'd say, hundreds of thousands of invitations to
17 people to come to her home. Her home happened to be a mansion. It wasn't a
18 McMansion. It was an out and out mansion! Marwood. It was not in the R-60 zone. It
19 was not in the R-90 zone. A very historic house patterned on Mount Maison outside of
20 Paris. It had been owned by the Roosevelt family and then the Kennedy family and sure
21 enough, people came in and out of the house morning, noon and night and Louise took
22 them on a tour. And she was successful. She was elected to the State Senate and
23 served with the distinction. During that time, when I was working for her, she gave the
24 shortest and most effective speech I have ever heard. She had a Bill that sought to
25 impose a test, a medical test, on newborn children, something known as PKU, which is
26 testing for disease and the Committee Chairman was explaining the Bill and someone,
27 a Senator on the floor, asked if the sponsor of the Bill could tell the Senate what PKU
28 stood for, and Louise rose and she said "phenylketonuria" and sat down and the Bill
29 passed unanimously. A very effective speech. In 1974, Louise ran for Governor and she
30 was the Republican nominee for Governor of the State of Maryland and the obituaries
31 that I saw in the "Post" and the "Sun", beautiful obituaries, did mention this, but I think
32 it's worth emphasizing that Louise Gore was the first woman to be nominated by either
33 party to run for Governor of Maryland. She was not successful, but it was a landmark
34 campaign. The person elected was Marvin Mandel. Louise went on to be our
35 Ambassador to UNESCO and was involved in a lot of other great endeavors and you
36 might recall we had a Presidential campaign in the year 2000, you know, Y2K. It was, I
37 think we all might remember it was a no holds barred campaign. There was one hold
38 that was barred for Louise's second cousin was Al Gore. The Gores of Tennessee were
39 Democrats. The Gores of Maryland were Republican. I remember in the State Senate,
40 Louise brought her cousin down, that's how I met him. That was the Senior Senator
41 Gore and his son, the future Vice President. And I'll never forget what Al Gore, Sr. said.
42 He said the poor Gores went to Tennessee, the rich Gores went to Maryland. Not
43 exactly accurate, but it was a very amusing remark. It was a close family. It was a
44 family. And, in fact, Al Gore, the Vice President, spent many years living at the Fairfax
45 Hotel, that was owned by Louise Gore, and dining at the Jockey Club, which was the



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1 restaurant of note that was in the Fairfax Hotel, but did you ever see Louise Gore on
2 cable television talking about her cousin? Did you ever see any interviews anywhere
3 where she was saying anything critical about him in any way? No. Louise Gore was a
4 very classy lady. She set an example of integrity that I think needs to be more emulated
5 in our present political environment than may be the case. So, we will miss her, all of
6 the people whose lives she touched. And the memorial service at the Potomac United
7 Methodist Church will take place tomorrow. Thank you, Mr. President.

8
9 Council President PEREZ,
10 Okay. We are on approval of minutes. Madame Clerk?

11
12 Madame Clerk,
13 We have the minutes of September 20th for approval.

14
15 Council President PEREZ,
16 Seconded. All of those in favor? Unanimous among those present. Turning to the
17 Consent Calendar, again, Item D was deferred. Moved and seconded. Ms. Praisner.

18
19 Councilmember PRAISNER,
20 Yes, I wanted to comment on the defibrillator resolution.

21
22 Council President PEREZ,
23 You have to be able to say it in order to comment on it.

24
25 Councilmember PRAISNER,
26 I have trouble with the word resolution, but okay with defibrillators. That's a problem
27 there!

28
29 Council President PEREZ,
30 Spell defibrillator.

31
32 Councilmember PRAISNER,
33 I just wanted to make note that the resolution speaks to an effort after the passage of
34 legislation. I thank my colleagues for their support on requiring those not only in private
35 sector athletic facilities, gyms and exercise facilities, but also we provided funding for
36 their placement in recreation centers, all County recreation centers, but the issue has
37 been raised by community members and by some of my colleagues about the
38 appropriate placement in other County buildings, and there are now three within this
39 building on the seventh floor, the second floor and the third floor. This effort would have
40 both the Department of Fire and Rescue Services taking the lead and asking the County
41 Executive to designate Department of Fire Rescue Services as the lead department for
42 a coordinated approach by all public agencies in Montgomery County. And asking them
43 to the extent possible to have common education initiative, common staff training, joint
44 procurement where possible, assistance with certification, there is a certification
45 process with the Maryland Institute for Emergency Medical Services, and any legislative



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1 issues that might be identified to work with the Office of Intergovernmental Affairs. At
2 the meeting which I facilitated, all of the agencies came together and I was very
3 impressed by the interest and desire of the agencies to work cooperatively to ensure
4 that we install additional defibrillators across public buildings. So, the resolution would,
5 in essence, implement a coordinated approach. Thank the Council President for
6 allowing me to speak on that issue.

7
8 Council President PEREZ,

9 No problem. Okay. No other lights. All of those in favor, unanimous among those
10 present. I was looking for Mr. Faden. Unanimous about the Consent Calendar, Mr.
11 Subin. I didn't see Mr. Faden before that's why I had skipped over the petitions. We
12 have receipt of petitions. Petitions from residents of Montgomery County supporting the
13 reduction of the property assessment cap from 10 to 5%, 1786 names led by our friend,
14 Marvin Weinman. Thank you, Marvin, for your continuing advocacy. I had a question for
15 Mr. Faden. And I'm sorry, I was looking to my right before and I should have been
16 looking straight ahead. Refresh the Council's memory on the process each year for
17 taking up the issue of the assessment cap.

18
19 Mr. Faden,

20 The practice, up until this year, had been to pass a Bill every year setting the amount of
21 the state assessment cap. The state requires counties and municipal governments to
22 set an amount anywhere between zero and 10% for the assessment cap, which is
23 technically known as the Homestead Property Tax Credit. Up until last year we had read
24 the state law as requiring the County to take legislative action every year and it has
25 done so. We re-read the law and confirmed this with the State Department of
26 Assessments and Taxation last year and realized that if the County took no action, the
27 previously set amount, which is 10%, would stay in effect. So, this year a Bill has not
28 been proposed to date to set the action. The deadline under state law for notifying the
29 state of any change in the County's assessment credit amount is November 15th.

30
31 Council President PEREZ,

32 Okay. So if it I'm hearing you correctly, there are one, there's one of two options, well, if
33 the Council were inclined to keep it at 10%, we could either pass a Bill, introduce a Bill,
34 debate it and pass a Bill that reiterated that we stay at 10%, or we could simply, in
35 effect, pass no Bill, in which case what we did last year would continue.

36
37 Mr. Faden,

38 Yes, that's correct.

39
40 Council President PEREZ,

41 Okay. And if we wanted, obviously, if we want to change it, the only vehicle to change it
42 would be a Bill that would reduce it from 10 to whatever the majority would be?

43
44 Mr. Faden,



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1 Right. And that would need to be acted on and have the Executive act on it before
2 November 15th.

3
4 Council President PEREZ,
5 Okay. And how much time is needed for notice for a public hearing for that?

6
7 Mr. Faden,
8 If the Bill's an Expedited Bill, which it would have to be at this point, the Bill doesn't need
9 to be an Expedited Bill because its effective date is irrelevant as long as it's passed by
10 November 15th, but given the schedule to get a shorter hearing, well, actually, I don't
11 want to, let me backtrack one step. A Bill could be introduced, at least today and
12 possibly next week, I'd have to check with Ms. Lauer, in order to have the normal 15-
13 day notice. Otherwise it could be done as an expedited Bill and you could have a
14 slightly shorter or even somewhat shorter notice period.

15
16 Council President PEREZ,
17 Gotcha. Okay. Thank you for refreshing our memory on process. Okay. Turning then to
18 District Council Session, Agenda Item 4, Introduction, Subdivision Regulation 05-03,
19 Adequate Public Facilities Validity Period sponsored by the Council President at the
20 request of the Planning Board, we have a resolution to establish a public hearing.
21 Moved and seconded. All of those in favor? Unanimous among those present. The next
22 item we'll come back to in a minute. This is Mr. Silverman's Bill regarding, oh, okay, let's
23 turn to it right now. Zoning Text Amendment 05-16, Workforce Housing Metro Station
24 Police Areas sponsored by Councilmember Silverman. I'll turn to you in a minute. Why
25 don't we just do the Action of Resolution to establish public hearing on November 22nd
26 at 7:30.

27
28 Councilmember PRAISNER
29 Second.

30
31 Council President PEREZ,
32 Moved and seconded. All those in favor? Unanimous. Mr. Silverman?

33
34 Councilmember SILVERMAN,
35 Thank you, Mr. President. This Legislation and Zoning Text Amendment is designed to
36 address a growing middle class housing crisis in Montgomery County. Simply put, we
37 have an affordable housing program which provides opportunities for our cops,
38 firefighters and teachers as individuals to be able to work and live in Montgomery
39 County. The challenge is, if you happen to be a starting teacher married to another
40 starting teacher, you are priced out of our affordable housing program and,
41 unfortunately, in many cases, priced out of Montgomery County. We have to make sure
42 that we are providing opportunities for our public sector and private sector workforce to
43 live in Montgomery County and this program is designed to address a modest increase
44 in density around our Metro station areas tying into our smart growth policy here in the
45 County. It is targeted at high density development in our Metro station areas and as a



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1 practical matter, what it will mean in most cases is a building which might be 100 units
2 at 9 or 10 stories, might end up having another story put on it for workforce or middle
3 class housing. The Legislation would mandate the developers build workforce housing
4 units equal to 10% of the market rate units. There will be applicability to subdivisions of
5 35 or more units for 10 years for sale and 99 units for rental. And there will be no bonus
6 density of market rate units. That's a difference between this proposal and our current
7 affordable housing or MPDU legislation, which provides a bonus density. These are
8 condominiums or apartments which should sell or rent at a high enough level to cover
9 the expense of building without the need for any additional market rate units. I look
10 forward to the discussion. For those of us who support expansion of middle class
11 housing opportunities in Montgomery County, we have to decide where we want folks to
12 live. We know that we're going to have a continuing demand for middle class housing
13 and affordable housing in this County. We don't want it to go in the Ag Reserve. We
14 don't want to support sprawl development. The only logical place to do it is in areas
15 where we already have the infrastructure, and that's our transit areas and that's why the
16 legislation has been introduced. It's my understanding, I know as of yesterday that Ms.
17 Floreen is a co-sponsor of the Zoning Text Amendment and the Legislation as is Mr.
18 Subin. Thank you very much, Mr. President.

19
20 Council President PEREZ,
21 Okay. Ms. Praisner?

22
23 Councilmember PRAISNER,
24 Yes, I had a couple of questions and also wanted to be clear and maybe request an
25 amendment. You talked about both the Legislation and the Zoning Text Amendment
26 and I think it's appropriate. The Zoning Text Amendment looks like it permits in a C-2
27 zone, which is not a central business district and so I wasn't clear with the C-2 zone
28 because there's no reference in the heading or in, but the packet appeared to look as if
29 it permitted it in the C-2 zone. So, if I could get clarification, is it C-2 zone within the
30 central business district or what?

31
32 Ralph WILSON

33
34 Within the Metro station --

35
36 Councilmember PRAISNER,
37 Metro station --

38
39 Councilmember SILVERMAN,
40 The Circle to begin with is a Metro station policy area. And then it is designed to apply
41 to any zones where there would be 40 or more dwelling units per acre regardless of
42 what the zone is. And it was done specifically to avoid scenarios where if you look at the
43 Metro station policy areas, we have a variety of different zones and it was designed to,
44 in effect, apply really to the high-rise or higher density pieces of the Metro station policy
45 areas.



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1
2 Councilmember PRAISNER,

3 Right. So then we need to make sure or there needs to be clarification when we get
4 through the hearing or whatever in Committee, the extent to which C-2 zone application
5 or how we narrow that in some way because there are C-2 zones all over the place,
6 including in less than desirable areas to see increased density.

7
8 Councilmember SILVERMAN,

9 Right. Well I think Circle, I'm just looking at Circle 3 of the Zoning Text Amendment and
10 the requirement is that the development has to be located in a Metro station policy area.
11 So it would only--

12
13 Ralph Wilson

14 Or I know of two C-2 projects in those locations, one of them is being developed and the
15 other is online.

16
17 Councilmember PRAISNER,

18 No, I understand that but when you look at the Zoning Text Amendment itself and you
19 look at C-2 zone language, it appears to look as if it's permitted anywhere in the C-2
20 zone. So, I think we need to look at how you clarify that.

21
22 Ralph Wilson

23 Okay.

24
25 Councilmember PRAISNER,

26 The reference also is that this would provide townhouses and apartments. I would like
27 to have some understanding of the extent to which townhouses are likely to be
28 developed given the requirements of number of units, et cetera.

29
30 Ralph Wilson

31 Okay, we'll do that.

32
33 Councilmember PRAISNER,

34 And thirdly, in the legislation, I think it provides for a buyout option. I would like to make
35 sure that the buyout -- if I'm correct --

36
37 Council Attorney Faden

38 There actually is an alternative location agreement:

39
40 Councilmember PRAISNER,

41 Right. Well the alternative location agreement should not be outside the areas. I would
42 like to make sure that there is language that those alternative locations shouldn't be
43 counter to the goal, which is to put this development in those Metro, et cetera, areas
44 and I'm not sure that the language is clear in that area.



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1 Mr. Faden

2 We'll double check that, but the alternative location provision cannot, in any case,
3 override the zoning law restrictions.

4
5 Councilmember PRAISNER,

6 Well, but given the complications of our zoning law and the fact that zoning can change
7 any day, I do not want a situation where the alternative that someone comes forward
8 with is outside of the Metro station policy areas that we're talking about. Thank you.

9
10 Ralph Wilson

11 While we're talking about the Text Amendment, if I could mention one slight correction
12 that we need to make throughout this. It creates a new section and it's mistakenly
13 identified as 59(a)6.17. It should be 59(a)6.18, which is the last section of that
14 particularly provision in the zoning ordinance. So, I'll make that correction throughout.

15
16 Council President PEREZ,

17 Okay. Mr. Subin, you had your light, did you --

18
19 Councilmember SUBIN,

20 No, Mr. Silverman had my name added as a co-sponsor.

21
22 Council President PEREZ,

23 Okay. Great. Okay. We're assuming right now, by the way, that we're speaking about
24 Agenda Item 4, I'm sorry, Agenda Item 5 in District Council Session and Agenda Item 8
25 in Legislative Session and both those, the hearing on both the Text Amendment and the
26 Bill will be held on the 22nd of November at 7:30. Okay. Moving to Legislative Session,
27 day 30. Madame Clerk, any Legislative Journal for approval?

28
29 Madame Clerk,

30 You have the Legislative Journal of September 20th for approval.

31
32 Council President PEREZ,

33 All of those in favor. Unanimous. Oh, yes? Mr. Subin.

34
35 Councilmember SUBIN,

36 I'd like to abstain from that, I wasn't present, so--

37
38 Council President PEREZ,

39 Okay. Let me think here, okay. Agenda Item Number 6, Bill 28-05, Building Permits -
40 Adequate Public Facilities sponsored by the Council President at the request of the
41 Planning Board, public hearing is set for December the 6th at 1:30 p.m. Agenda Item 7
42 is Condominiums - Conversion of Rental Housing, sponsored by Councilmembers
43 Praisner, Leventhal and Subin. Public hearing set for November 1st at 1:30 p.m.
44 Expedited Bill 31-05, Personnel - Benefits - Prescription Drugs, sponsored by Council
45 President Perez, Councilmembers Denis, Praisner, Leventhal, Silverman, Floreen and



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1 Andrews. Public hearing set for November 1st at 1:30 p.m. We've got a number of Bills
2 here. Ms. Praisner?

3
4 Councilmember PRAISNER,

5 I wanted to make a comment on 29-05. It's in the packet, but since it's, I just want to
6 make it verbal so that folks who may be interested in the Bill. This deals with the rules
7 governing the eligibility when you have a condominium conversion for the leases and
8 the type of households, et cetera, relates to a discussion we had when we dealt with
9 emergency legislation earlier this year and reflects some of the expectations or
10 advocacy for modification that Ms. Davidson from the Department articulated. There
11 was another issue that would be an amendment to the Bill that I'd like us to have
12 discussed that Kathleen makes reference to in the packet, but I wanted to make public
13 so that anyone watching this has an opportunity to think about it, and that's to allow a
14 tenant who doesn't reside in the building to obtain an extended lease if the resident of
15 the unit is eligible for the extended lease. In other words, it deals with a, what would be
16 a, say a non-profit, that may be the tenant, and have, may be the lessee of the unit but
17 the occupant, it's designed for one of the special classes of individuals to occupy, and I
18 want to be able to have that opportunity continue for the tenant to continue to have that
19 same kind of eligibility. So that would be an amendment that we could discuss when we
20 go through the Bill. Thank you.

21
22 Council President PEREZ,

23 Mr. Subin. Oh, actually, are you talking about 29-05 right now?

24
25 Councilmember SUBIN,

26 No, sir.

27
28 Council President PEREZ,

29 Okay. If I could, is this, when we were taking this Bill up on the 26th, the last, or the
30 27th, whatever the last day of July was, my recollection was we had a discussion about
31 not doing this. And then it was a knotty policy issue and we basically deferred it and this
32 is where we are now. Okay.

33
34 Councilmember PRAISNER,

35 This is the option to be able to consider that issue.

36
37 Council President PEREZ,

38 Okay. No, I remember that conversation well and there were equities on both sides.
39 Okay. Very well. Mr. Subin, we were, I think we had left off, we'd just introduced 31-05.

40
41 Councilmember SUBIN,

42 Thank you, Mr. President. It has been a very long-standing policy of mine not to address
43 legislation that was simply being introduced but because I feel so strongly about this
44 issue, I'm going to break my own policy today, knowing full well that I can count to six,
45 or count to five and there are enough sponsors to pass this and if there's an anticipation



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1 that the Executive is going to veto this, then they will need to be six. I am not going to
2 comment on any of the policy issues here. Where one can wax eloquent on behalf of
3 consumers here and one can wax eloquent on the part of the pharmaceutical
4 companies, there are people who are paid big bucks to do both. I, however, cannot get
5 to the policy issues involved here. For me, this is not a policy question this is a legal
6 question, in which we are going to require the County Executive to do something that
7 has been deemed, in at least three legal opinions, three formal paid-for legal opinions,
8 to be an illegal act. Illegal in terms of Congress and the FDA has said thou shalt not.
9 The Board of Education has been formally requested to take an illegal action and now
10 we have a Bill before us to tell the Executive to violate the law. If you all want to violate
11 the law, you all go violate the law. Don't put the County Executive or anybody else at
12 risk. It is the height, I think, of hypocrisy for a lawmaking body to urge itself and other
13 members of the government to break the law. And if we do that, why should anybody
14 else listen to any of our laws? If this is a policy issue and the issue is trying to get
15 Congress or the FDA, or both to rescind their policy, reverse fields and allow the
16 importation of pharmaceuticals from Canada, I think that is probably a noble effort, but
17 take the time, spend the energy to advocate before Congress to get them to change
18 those policies. Good chance under the right conditions that I would join you on a policy
19 basis. But to instruct the Executive to either break our laws or break the federal laws
20 and put the Executive in an untenable position and put the Executive between a rock
21 and a hard spot, I do not think is a fair thing to do. I would hope that somehow this Bill
22 could be rescinded and substituted with a resolution requesting the Congress of the
23 United States to change course, if that is what is so desired. May or may not be noble,
24 but it's certainly legitimate and is certainly a legitimate role for this body to take. That if a
25 majority of this body views it as beneficial to the citizens of this County, we not only
26 have the right but we have the obligation to move forward on that. But do not put the
27 Executive, whether it is this or any other Executive, do not put the Board of Education,
28 whether it's this Board or any other Board, do not put the Superintendent of Schools,
29 whether it's this Superintendent or any other Superintendent in the position of having to
30 break the law simply to follow our dictates. We're not going to jail. We can pass
31 whatever laws we want up here but if the Executive or the Superintendent or the Board
32 breaks the law, we are putting them in harm's way. And I would hope that the sponsors
33 of this legislation can follow the legitimate role that we have in looking after the welfare
34 of our citizens and if we believe that this is the best route to take to import
35 pharmaceuticals from Canada, there is a road to do that and it is not a very long road.
36 All you have to do is jump on the Metro you don't even need an Amtrak reservation.
37 Jump on to the Metro, go to the Capitol and tell the folk down there this is what needs to
38 be done. I will not, with my vote, at least, ask the County Executive or any other official
39 to be put into harm's way by deliberately telling them to break the law.

40
41 Council President PEREZ,

42 Okay. Thank you, Mr. Subin. We have the, what? No, Mr. Subin, I do mean that. Mr.
43 Subin is a good friend whose opinions I very much value. We've had this conversation
44 many times on the Council, as you know, with respect to the legal issues. Like so many
45 issues that come before the Council, we have legal opinions saying that it's legal and



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1 we have legal opinions that say it's illegal. My friend and the FDA has said it's illegal.
2 The FDA has also recently pulled its authorization for the morning-after pill,
3 notwithstanding the science that indicated that it was completely safe. As Charles
4 Grassley, conservative Republican from Iowa recently indicated on the Diane Rehm
5 show, regrettably, politics has infected science at the FDA. And so with all due respect,
6 the notion that it's illegal because the FDA has said it's illegal, if a court opinion says it's
7 illegal, then I will absolutely agree with Mr. Subin's propositions, but we have legal
8 experts who have opined and said it's legal. We have legal experts who've opined and
9 said it's illegal. So, we're in a very similar position to so many Bills that we consider
10 before the Council, including the smoking ban, including most recently the small
11 business set aside in which our Council, County Council Attorney, Mike Faden, whose
12 judgment we value and our friend Mark Hanson opined that that was of dubious legality.
13 We had other legal opinion from Professor Raskin to the contrary and we made a policy
14 call as to what was in the public interest. Unless and until we have a call from a court of
15 law as opposed to the court of the FDA, which, you know, can't seem to get its house in
16 order on so many things these days, and I say that with great sadness because I had
17 the privilege of working at HHS for two years and meeting with them on a regular basis,
18 and they are some of the best scientists in the world. And it is regrettable as no other
19 than Chairman Grassley points out, that they have allowed politics to infect decision-
20 making in so many different areas. I don't think the American people are well-served by
21 that. But as long as we have the muddled legal picture and we have something that is
22 not muddled, which is the safety issues and you have to your credit never attempted to
23 rely on the safety issues you've acknowledged that those claims are bogus, and so
24 we're going to move forward because I believe it is the right thing to do. I certainly
25 appreciate that reasonable people can differ and I appreciate the spirit in which you've
26 approached this. So, that is our debate today and it will continue to move forward. [
27 inaudible] Okay, Agenda Item Number 10, wait a second, 9.1, whoa, wait a minute!
28 Contracts and Procurement Service Contracts, sponsored by Councilman Leventhal.
29 Public hearing set for November 1st at 1:30 p.m. Agenda Item 9.2, Silver Spring Parking
30 Lot District Amendment, sponsored by myself. Public hearing set for November 1 at
31 1:30. And we can move to calls of Bills for a final reading, Expedited Bill 24-05,
32 Department of Economic Development, a non-merit position, minority business affairs
33 manager, this would be the PHED Committee. There was a recommendation for
34 approval. This is an Expedited Bill so it is a six-vote requirement. Let me turn to the
35 PHED Committee Chair. We are on Agenda Item Number 10, which is -- [multiple
36 speakers]

37
38 Councilmember SILVERMAN

39 Thank you.

40
41 Councilmember LEVENTHAL,

42 Thank you, Mr. President. The PHED Committee recommends approval of this
43 expedited Bill 24-05, which is non - merit position - minority business affairs manager.
44 This was funded by the Council in the FY 2006 operating budget. The documents here
45 indicate the annualized cost of the position and it's pretty straight forward, continuing



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1 our efforts to focus on minority business issues in Montgomery County. That's the
2 Committee recommendation.

3
4 Council President PEREZ,
5 Okay. There are no questions. Madame Clerk, please call the roll.

6
7 Madame Clerk,
8 Mr. Denis.

9
10 Councilmember DENIS,
11 Yes.

12
13 Madame Clerk,
14 Ms. Floreen.

15
16 Councilmember FLOREEN,
17 Yes.

18
19 Madame Clerk,
20 Mr. Subin.

21
22 Councilmember SUBIN,
23 Yes.

24
25 Madame Clerk,
26 Mr. Silverman.

27
28 Councilmember SILVERMAN,
29 Yes.

30
31 Madame Clerk,
32 Mr. Knapp.

33
34 Councilmember KNAPP,
35 Yes.

36
37 Madame Clerk,
38 Mr. Andrews.

39
40 Councilmember ANDREWS,
41 Yes.

42
43 Madame Clerk
44 Ms. Praisner.



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1 Councilmember PRAISNER,
2 Yes.

3
4 Madame Clerk,
5 Mr. Leventhal.

6
7 Councilmember LEVENTHAL,
8 Yes.

9
10 Madame Clerk,
11 Mr. Perez.

12
13 Council President PEREZ,
14 Yes. Bill passes 9 to 0. Agenda Item 11, Bill 25-05, Consumer Protection Office, Powers
15 and Duties. Let's turn to Mr. Andrews to talk about what the Public Safety Committee
16 thought of the Bill.

17
18 Councilmember ANDREWS,
19 We take up a lot of issues, I just don't remember this one! Maybe it was another
20 Committee.

21
22 Councilmember SILVERMAN
23 Thank you, Mr. President. Bill 25-05 was introduced by Council President Perez and co-
24 sponsored by Councilmembers Praisner and Andrews. This Bill would create a separate
25 Office of Consumer Protection as a principle office in the Executive branch headed by a
26 merit system director and would transfer consumer protection duties from the
27 Department of Housing Community Affairs to the Office of Consumer Protection. This is
28 the undoing of an organizational structure that was changed in the mid-'90s. Housing-
29 related functions would remain in DHCA and this does not substantively change the law
30 that the Office of Consumer Protection would enforce and it is our understanding that
31 there is legislation in the works to deal with the substantive issues. The only discussion,
32 or difference of opinion that we had in Committee related to what would happen to
33 staffing and administration of the Commission on Common Ownership Communities. As
34 introduced, the Bill would require the CCOC and its duties to remain within Department
35 of Housing Community Affairs as a housing-related function. The Executive branch
36 recommended that the staff and expenses be shifted to the Office of Consumer
37 Protection as did the Commission on Common Ownership Communities itself. Primarily
38 because the office, the consumer affairs component of the Department of Housing
39 Community Affairs is currently doing the work and it is being administered by the
40 Division of Consumer Affairs and the Committee recommendation was split 2 to 1.
41 While there is certainly a rationale for putting the Common Ownership Community's
42 responsibilities in DHCA because it's a housing-related matter, the sense was if it ain't
43 broke, don't fix it. And the Committee recommendation is to amend the Bill to keep
44 CCOC staffing and functions in the Office of Consumer Protection. That was a 2 to 1
45 vote with Ms. Praisner in the minority. The Committee also approved some technical



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1 amendments to confirm that DHCA will continue to enforce the condominium chapter
2 and resolve complaints under it. That's the recommendation of the Committee.

3
4 Council President PEREZ,
5 Ms. Praisner?

6
7 Councilmember PRAISNER,

8 Well, I think it is broke but I'm not going to argue the issue. I really think that when
9 you've got landlord/tenant issues handled in Housing and Community Affairs and your
10 other kinds of tenant or owner and association relationship issues are handled in
11 Consumer Affairs, it makes no logic whatsoever. The only reason why we're keeping
12 this is because people now supervise other people and it's a supervision and
13 management issue, not a logic issue, as to where the functions belong. So, to continue
14 to perpetuate it at this point is, I think, to tell people who are common ownership folks in
15 the future, when you have issues, don't call Housing and Community Affairs, call
16 Consumer Affairs. They're going to say what? It doesn't make sense. But I'm not going
17 to argue the issue here because the majority of the Committee felt this way. If any of my
18 other colleagues feel that it's broke or there's a problem, I would second their motion,
19 but I'm not going to move on this. But I think if we don't do it now, with all due respect to
20 the two office directors, you got to fix this problem because it is a problem! And it isn't
21 that your convenience of supervision, it's an issue of where folks should logically go with
22 housing-type issues. And don't say that's because it's mediation or because it's
23 consumer-related. Under that umbrella, we should move Animal Control into Consumer
24 Affairs because it's consumer-related. And I can think of a ton of other things. So as I
25 said, I think we can contort ourselves by virtue of supervision, but in the long run, I think
26 the community needs to be served, not the people from a management perspective.

27
28 Council President PEREZ,
29 Mr. Subin?

30
31 Councilmember SUBIN,

32 Thank you. I don't, I may not disagree with Ms. Praisner that the system is broken but I
33 don't, on the other hand, think that it doesn't have a perceptual problem here for a
34 number of reasons, that consumers go to Consumer Affairs on what may be landlord
35 and tenant issues and then Consumer Affairs has to deal with that as having Housing
36 Community Development their boss. I think there's a potential conflict if not clearly the
37 perception of conflict but I go beyond that. And what I'm going to do was rather than go
38 into the argument, is simply move the minority position to keep Consumer Affairs
39 independent and then if there's a second, I'll argue on that.

40
41 Councilmember PRAISNER,
42 Why don't we move common ownership back.

43
44 Councilmember SUBIN,
45 Common ownership.



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1
2 Councilmember PRAISNER
3 I'll second that motion.

4
5 Councilmember SUBIN,
6 It's an issue of independence and an issue of perception, that we shouldn't be having a
7 group needing to keep a weary eye or potentially, and as I said in my last statement on
8 the Pharmaceutical Bill, this is not an issue where I believe that Ms. Davison has
9 created an environment in there in her department, in which her folks are worried about
10 doing things that she may or may not like or trying to please her. I have not heard word
11 one to that effect. So put that aside. This is a generic issue. I don't know who is going to
12 be in your position in, what is it Steve, a year and two months or whatever?

13
14 Councilmember SILVERMAN,
15 Might be.

16
17 Councilmember SUBIN,
18 Might be. Or whether you'll be there or somebody else will be there. I don't know. I don't
19 know who's going to be there in four years and as just a fundamental concern that I
20 want to make sure that if a citizen has a concern or a complaint that they know, that
21 they know, not that they think, but that they know they are going to be able to go to a
22 group charged with looking at those issues and that group is going to be unfettered of
23 any considerations but those issues and what the law is. It is purely and simply that.
24 And again, I want to make sure because somehow I think there's going to be a
25 statement in a newspaper tomorrow that this was a trashing out of Elizabeth Davidson.
26 No. Because I have not heard word one that would bring that issue to the floor. This is a
27 very generic issue for me.

28
29 Council President PEREZ,
30 I want to turn to Elizabeth Davison. I know you wanted to say something important.

31
32 Councilmember SILVERMAN,
33 If I may, what I'd asked Elizabeth here to talk about is the staffing issues, which I didn't
34 discuss. And that really was part of the reason why the majority of the Committee
35 wanted to keep this, in effect, where it is in the Office of Consumer Affairs so --

36
37 Elizabeth Davison,
38 Our concerns are just on a practical, how are we going to run these two offices or
39 department and an office? We have integrated a number of functions over the years
40 and now we're going to have to extricate them. There are two and a half work years
41 associated with Common Ownership Communities and those are not the exclusive
42 duties of some of the Consumer Affairs staff. So, we would be having to take staff
43 members who are predominantly trained and experts in mediation of consumer
44 complaints and move them back into the Department of Housing and Community
45 Affairs. It just seemed like an awkward way of doing it. We have, the several staff who



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1 are working on it have been doing it for several years, they have a track record. There's
2 a list of the types of disputes. These are disputes between a homeowners association
3 and a homeowner within the association. These are not part of the landlord/tenant law
4 by any means. And there are disputes often about design and cosmetic issues,
5 sometimes there are other types of issues about pets and things of that sort. We just
6 feel that along with the Commission on Common Ownership Communities that are very
7 happy with the staff they've been working with, and in order not to take someone who is
8 a trained and dedicated consumer protection mediator and move them into a
9 department because they happen to be working part of the time on these issues, didn't
10 seem reasonable. Also, there are many functions in Consumer Affairs that are housing-
11 related. They license home builders. They deal with a lot of home contractors and
12 disputes of that sort. Deal with home mortgage and predatory lending. So, I don't think
13 you can just draw a line saying it's housing or it isn't housing. So, our concerns are that
14 there are going to be additional costs and positions that would have to be created to
15 have this new office function and that to take away another 2.5 work years from them
16 seemed not a wise approach.

17
18 Council President PEREZ,
19 Okay, Ms. Floreen.

20
21 Councilmember FLOREEN,
22 Yes. This really isn't a huge issue. It's really more of a staffing issue, but I just wanted to
23 comment on the policy issue, as well. Because we're talking about the Commission of
24 Common Ownership function, which really is more of a consumer situation than a pure
25 housing situation because those are situations where people ventured into a deal in an
26 HOA environment, where, or a condominium environment, in which they have a contract
27 that spells out the relationships. And that is what I guess is mediated in these kinds of
28 cases. So admittedly, it involves housing, but it also involves a major mediation over
29 consumer agreements that they've entered into, which I think is a little different from the
30 landlord/tenant function that no one disagrees with should be left here. I'd just say if
31 we're going to elevate consumer protection to this level, I think it's not inconsistent to
32 include this portion within that.

33
34 Council President PEREZ,
35 Ms. Praisner?

36
37 Councilmember PRAISNER,
38 Well, I don't see any difference between the contractual relationship and the
39 landlord/tenant situation as there is in the common ownership. We're talking about
40 people. I'm not talking about people. I'm talking about the function and where the
41 function belongs and whether personnel, or how you shift personnel, you can make
42 adjustments in any way you can. If those folks are doing as much mediation consumer
43 issues, then the question of how much of the function then you ramp up the function in
44 the Common Ownership area and this is a fee-driven function. The Consumer Affairs
45 issues are so separate from a Common Ownership community requirements and



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1 relationships that there's a clear differentiation in my view, and I don't think we should
2 be looking at it, these two people will have to move or 2.5 people will have to move.
3 That is not necessary. The function moves. You make a determination about staff that
4 you need and how you structure them outside of the issue of function outside of the
5 issue of personnel.

6
7 Council President PEREZ,
8 Mr. Knapp.

9
10 Councilmember KNAPP,
11 I just have a question. If I read the last paragraph on the first page it says, "in the
12 introduced Bill, CCOC would remain with DHCA as a housing-related function." So it
13 would remain there. Then it says that, "CCOC is now administered," okay, Consumer
14 Affairs within DHCA. And so they want to stay within, as I understand, so, the letter at
15 the back, Circle 46 from the CCOC says they want to stay with Consumer Affairs
16 because that's the auspices under which they're currently under, but outside
17 independently, as opposed to staying within the broader DHCA where they currently are
18 housed, but just as a smaller piece. Is that accurate?

19
20 Councilmember SILVERMAN
21 Yes, yes.

22
23 Councilmember KNAPP,
24 Okay.

25
26 Council President PEREZ,
27 Okay, Mr. Silverman?

28
29 Councilmember SILVERMAN,
30 Yes. I think part of this also really is a question of who's going to be doing the oversight
31 of the complaints, the handling of complaints, the handling of mediations, the handling
32 of the actual dispute resolution hearings. Right now it's that gentleman right there, Mr.
33 Friedman. If we keep this within the Department of Housing and Community Affairs, the
34 sort of line authority, so to speak, is going to be that woman right there, who is currently
35 not doing it. And since we have, not doing it except in the macro sense that Elizabeth
36 heads up the Department, but the fact of the matter is that if you take Eric and move
37 him over there into a separate office, which is what we appear to be on the precipice of
38 doing here legislatively, then in effect someone within DHCA will have to take
39 responsibility for overseeing this area of work which, frankly, has been, has not been
40 overseen at the same level, I would say. And at least in my view, I don't want to add to
41 any more responsibilities, direct responsibilities for Elizabeth Davison or anybody else in
42 the Department of Housing and Community Affairs because they're already, you know,
43 up to their eyeballs in housing-related issues. Whether it's landlord/tenant or not, but
44 we're asking a lot of a very small office and it seems that we ought to keep it where it is
45 and where it's been functioning. We didn't hear any complaints from anybody saying,



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1 gosh, we need to be within the Department of Housing. What we heard was from the
2 Commissioners that Exec and Council appointed to handle this issue, and we heard
3 from the Executive branch, they prefer to keep it this way. I'm concerned about putting
4 another requirement for more direct oversight of this issue in the hands of Elizabeth
5 Davison and her people when I think they ought to be spending all their time on the
6 housing issues that we all care about.

7
8 Council President PEREZ,

9 Okay. I think the issue, well, I was going to say it's been, the issue has been joined.
10 Moved and seconded? Mr. Subin? We're going to vote on your motion. And I think we
11 understand the motion. All of those in favor? Mr. Subin and Ms. Praisner oppose. And
12 Mr. Denis, Ms. Floreen, Mr. Silverman, Mr. Knapp, Mr. Andrews, Mr. Leventhal and
13 myself. So it fails 7 to 2.

14
15 Councilmember PRAISNER,

16 I just had one comment that will require separate reporting on the funds associated with
17 them since they'll be in separate departments, so OMB will have to separate those
18 funds and separate the accounting for those funds and the functions for those funds so
19 that we keep track of them.

20
21 Council President PEREZ,

22 Okay. Mr. Subin, did you have anything else you wanted to add?

23
24 Councilmember SUBIN,

25 No, sir.

26
27 Council President PEREZ,

28 Okay, great. I wanted to thank the Committee for their prompt action on this Bill and
29 thank the Executive branch for their attentiveness throughout this Bill. I think this is a
30 very important step in the right direction for consumers throughout Montgomery County
31 and one of the most important elements of a successful Office of Consumer Protection
32 is visibility and I think one goal we will accomplish with this is the opportunity to provide
33 enhanced visibility to this office so that it can do the critical work of protecting
34 consumers in every corner of the County. So, thank you to the members of the
35 Committee and I'm also looking forward to the substantive changes to the chapter
36 because we have had a number of conversations and, frankly, that is as important as
37 what we're doing today to ensure that not only are you an independent, or an office that
38 has more visibility, but that you have the tools you need to do your job in the most
39 effective manner possible. So I certainly hope and expect that we won't, I doubt we'll
40 complete the consideration of that in the next couple of months, but I certainly hope and
41 intend to introduce the measure so that we can begin the public dialogue. And I do want
42 to thank Elizabeth and Eric and Doug Duncan and others who have been very involved
43 in the process of reviewing our Consumer Protection Ordinance so that we can make
44 sure it fits the challenges confronting the new Montgomery County. So, hopefully we'll
45 have that out here to introduce in the near future. Madame Clerk?



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1
2 Madame Clerk,
3 Mr. Denis.
4
5 Councilmember DENIS,
6 Yes.
7
8 Madame Clerk,
9 Ms. Floreen.
10
11 Councilmember FLOREEN,
12 Yes.
13
14 Madame Clerk,
15 Mr. Subin.
16
17 Councilmember SUBIN,
18 Yes.
19
20 Madame Clerk,
21 Mr. Silverman.
22
23 Councilmember SILVERMAN,
24 Yes.
25
26 Madame Clerk,
27 Mr. Knapp
28
29 Councilmember KNAPP,
30 Yes.
31
32
33 Madame Clerk,
34 Mr. Andrews.
35
36 Councilmember ANDREWS,
37 Yes.
38
39 Madame Clerk,
40 Ms. Praisner.
41
42 Councilmember PRAISNER,
43 Yes.
44
45 Madame Clerk,



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1 Mr. Leventhal.

2
3 Councilmember LEVENTHAL,
4 Yes.

5
6 Madame Clerk,
7 Mr. Perez.

8
9 Council President PEREZ,
10 Yes. Bill passes 9 to 0. Action on the Fire Rescue Emergency Medical Services and
11 Community Risk Reduction Master Plan. Public Safety Committee recommends
12 approval with amendments. We'll turn to Councilmember Knapp, I believe.

13
14 Councilmember KNAPP,
15 Thank you, Mr. President, I appreciate it. I wanted to invite up Chief Carr and Chief
16 Love and Mr. Gutschick. What we have in front of us is the Fire and Rescue Master
17 Plan, which, this is the second time the Council has undertaken review of such Master
18 Plan. The last time was in October, 1994 where the first one was adopted. This, the
19 current plan, which has been extended, was scheduled to expire in 2004, but due to a
20 lot of other conversations that were ongoing in the Fire and Rescue Service at the time,
21 we extended it for deliberation through this past year. I believe my colleagues have all
22 received a big binder with the full plan. For Mr. Denis' benefit, they actually included a
23 glossary and a list of acronyms just so you can follow your way through.

24
25 Councilmember DENIS,
26 All right, good!

27
28 Councilmember KNAPP,
29 There's the glossary and the acronyms. See, there you go. This plan has been under
30 development for, I think, roughly the last two years, perhaps longer, has gone under
31 extensive public review, scrutiny by folks in the Fire and Rescue Service outside the
32 Fire and Rescue Service. At one point a couple of years ago I ended up following Scott
33 around to various citizens advisory boards throughout the County. And there have been
34 hearings held before the Fire Rescue Commission as well as before the County Council
35 itself. This plan that we're adopting now will be a little bit different in that the previous
36 plan, as I understand it, was adopted and wasn't necessarily revisited all that often
37 throughout the previous 10-year period. Because of the modifications and changes
38 within the Fire and Rescue Service, Chief Carr has suggested that, and the Committee
39 has concurred, that this in fact be reviewed within the next 18 months to look at how are
40 the new organizational activities within the Fire and Rescue Service being addressed
41 relative to the current Master Plan so we can make sure that the two were in fact, in
42 sync. I'm going to run through this a quick pieces within the packet itself and then I will
43 turn it over to Chief Carr to run through the, over the Master Plan itself. Briefly, the
44 strengths of this plan including the amount of risk analysis based on information from
45 the GIS system, from approved instant reporting systems, advances in technology over



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1 the past 10 years and made it possible to incorporate more data analysis into this plan
2 than before and provide a much stronger basis for objective decision-making. In
3 addition to volume information the plan provided a great deal of insight into the Fire and
4 Rescue Service and the way it's operated. Originally, as originally drafted and presented
5 to the Fire and Rescue Commission, the plan presented a lot of information but
6 identified a few high priority recommendations. The Commission went back and
7 suggested that there be an emphasis placed on more of the priorities and as a result of
8 that, there was a strategic plan that was designed. That was then transmitted in
9 conjunction with the Master Plan as a package from the County Executive. The Public
10 Safety Committee undertook the review of the plan in six work sessions and there were
11 a number of modifications.

12
13 Councilmember ANDREWS
14 Is that all?

15
16 Councilmember KNAPP,
17 That was it. It just felt like more. One of the significant things that we did first off was to
18 take the strategic plan and rather than have it as a separate document, incorporate into
19 the Master Plan, so they were driven off each other. There were some amendments that
20 the Public Safety Committee suggested as it relates to the strategic plan. There were
21 elements that were included in budget items or in budget requests that weren't
22 necessarily listed in the strategic plan and vice versa. And so what we wanted to make
23 sure is that the strategic plan was driving our budget decisions, as least part of our
24 budget decision-making activities and so we asked for those two elements to be more
25 coordinated. And so you'll see on Page 4 of the packet that there is a listing of the
26 elements of the strategic plans and the recommendations, with the original priority listed
27 and then the revised priority as undertaken by MCFRS. In addition, if you go through the
28 Master Plan, there are roughly 104 recommendations and what we had proposed is it
29 wasn't clear as we reviewed it that what we would need to undertake first. If we were
30 using the Master Plan as a document for us to make decisions and funding activities for
31 the Fire and Rescue Service, where would we go and how would we be sure that we
32 were making progress? So what we had suggested was that the priorities, or the
33 recommendations outlined in the Fire and Rescue, in the Master Plan itself, be broken
34 down into priorities and Fire and Rescue Service, under the Chief's direction, went
35 through and basically divided the priorities into three categories, A, B and C with A
36 being the highest, and if you wanted to look at Circles 52 through 55, you can see how
37 those priorities, or those recommendations are outlined. One of the other significant
38 other elements that we spent a fair amount of time discussing was response time goals.
39 You will see in the front of the packet that there is an outline as to response time goals,
40 the Committee feels very strongly. That is one, as is MCFRS, that is of the most critical
41 things we're trying to address, is how quickly is our Fire and Rescue Service responding
42 to the needs of our residents. And there were goals outlined that actually became, were
43 more stringent than what had been recommended in the 1994 plan, and the concern
44 that the Committee had was that while there were more stringent requirements as far as
45 meeting response time, there were still places where we had not met previous response



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1 time goals. And so it was somewhat of a disconnect. We felt to make it tougher if we
2 haven't achieved the first goals in the first place. And so after much discussion, we
3 understood the rationale for moving ahead with the more stringent goals but have asked
4 for better clarification as to where we haven't been meeting those response time goals
5 and how does meeting response time goals tie to the elements within the plan itself so
6 we can begin to measure and know what actions we need to take from a Council
7 perspective to make sure that we address those elements. As it relates to public safety
8 communications, I thank Ms. Praisner for her diligence. She reviewed all of the drafts of
9 the Master Plan from a public safety communications perspective and provided a
10 number of amendments through the process. There are a couple more that she has
11 recommended in the last couple of days which I'm assuming she'll want to talk to in a
12 moment. But I thank her for her efforts and we've addressed most of what she had
13 raised.



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Councilmember KNAPP,

There were elements related to the Public Safety Communication Center and Public Safety Training Center and that while we are currently in the process of modernizing the building and expanding it, there's reference in the Master Plan to potentially having a new one, or there was reference to that. We thought it would make sense to let's accomplish what we're doing first and make reference to the fact that we may have additional resource requirements and resource needs in the future and we'll need to take those into account but not necessarily talk about building a new one before we've revised the old one. I'd ask the Chief to discuss this a little bit in his presentation. In the Master Plan there is the notion of battalion-based resources, which is a model that Chief Carr wants to try to move toward. The conversation we had in the Committee was how did that work relative to centralization and decentralization? One of the things that we tried to do with the passage of 36-03 last year was to bring more coordination and centralization to elements of the Fire and Rescue Service and to do a battalion-based resources sounded more like a decentralization and seemed to be in contrast to each other. And so I think what the Chief is proposing over time is a very good idea, but I think it's worthwhile for him to explain that to us given the conversations that the Council had a year or so ago on 36-03. Let's see. Chairman Andrews raised the, had some language that he's proposed adding as it relates to additional recommendations stressing the importance of training for all Fire and Rescue personnel that will be added as well. That was addressed in the passage of Bill 36-03 and I think this helps strengthen the language that we had in the Bill itself. And I believe that covers all of the major categories. I would ask, Minna] if you have any remarks or Chief Carr to walk us through and then have questions once we walk through the plan.

Chief Carr,

Thank you, very much. This has been quite an effort to take the '94 plan and make it germane to 2005 through 2015, and it's certainly quite a work and I'd have to say first off, thanks to Scott, who's committed his life, I think, every moment of his life for the last two years to this, and he really took a breath when we said we wanted to review this at 18 months because that means he needs to start over right now and we'll address that. But that's an important point is that this plan's development, its birth was in the old organization and I really feel that it's critical that we take a breath at 18 months and look at where we are and where we're headed as an organization. Certainly we see already that we're on a different path than we were a year ago and I think it's important that the plan reflects where we need to head. That being said, the process that we've gone through, the public involvement both internal to the organization as well as external, has been very powerful in helping to identify, as an organization, where we're expected to go and where we need to go. As Mr. Knapp stated, we have the Master Plan, we have the strategic plan, but even further than that, it's driving my future fiscal impact work, it's driving my budget, it's driving essentially everything that we're doing as an organization is being driven by this plan, and is in fact addressed in this plan. So I think it's a very powerful document and certainly quite a cooperative piece of work. On Circle 5 you see that there was quite an extensive process that I've already mentioned. And Circle 6 we



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1 go into the facility recommendations, and they're in fact, the first initial group are in
2 process, but in addition to that we have new service, which is identified as the first four,
3 and we also have significant CIP effort in renovation, expansion and replacement of
4 facilities. And this is an area that certainly has been, to some extent, not properly
5 addressed over recent history, or over long-term history, I guess, and we find ourselves
6 dealing with a number of facility issues other than what's already identified here. So it's
7 an area that we're going to have to continue to work on. And that our future CIP projects
8 that meet the needs of the community as the community grows, as the community
9 changes and changes as in the need for a Shady Grove facility as the Shady Grove
10 area changes, and there are a number of issues there from a facilities perspective,
11 including lastly, studies to identify what future service needs there may be. And certainly
12 we've identified four areas of study. I guess my concern here is that we've got four
13 areas of study essentially in the current process. It takes about a year to do one study.
14 We have one person, one planner, Scott, and it's a struggle, but it's a very important,
15 each of those areas bears emphasis and extensive study to assure that we're meeting
16 the needs of the community, that we've got the right resources in place in the long-term
17 in the 2005-2015. Then the next section is specific to resource deployment issues, and
18 there are a number of specific recommendations we've worked through and identified as
19 enhancing or improving existing service. Certainly our 1710 four-person staffing
20 recommendation is important to our efficiency, the safety of our personnel, and the long-
21 term success of our organization. Sixth battalion supports the additional stations that
22 are being put in place and is really critical from a supervision perspective as is Mr.
23 Knapp's comment about the battalion-based resources. Certainly I concur that a year
24 ago we had significant debate regarding how this organization would be deployed and
25 determined that we needed one central base, a Fire Chief in the organization following
26 underneath that. As I look at the organization with that model in place, with the Fire
27 Chief in place, it becomes evident to me that we can provide better community-based
28 resources if we focus them on a more regional perspective. And by that I mean that
29 currently we have five battalions, we need to go to six battalions and to be able to
30 provide code enforcement support, which I've talked to you all about, concerns
31 regarding our capacity to do appropriate code enforcement, to have code enforcement
32 based in the battalions to split up the code enforcement personnel so that they can
33 understand the issues of the community that they're serving and base them right in the
34 community, so that if firefighters have questions, or community members have
35 questions, they're speaking to someone who's familiar with the specific issues in that
36 community. The same thing with EMS supervision. We don't have very robust EMS
37 supervision at the present time, yet that's 80% of the calls we run are EMS-related. We
38 are more reactionary than proactive in dealing with EMS issues, quality assurance and
39 things of that nature, because we haven't been able to put in place a robust system that
40 supports dealing with issues before they're issues, dealing with quality day to day as
41 opposed to answering the phone and dealing with the complaint that's on the other end.
42 So putting that in a battalion-based model, we believe, will assure more hands on, in
43 your face, day to day looks at quality and assuring that we're providing the best possible
44 EMS care we can. Community outreach is another very vivid example. One of the things
45 that we're trying to do is become part of the communities that we serve and become



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1 representative of the communities we serve. I've talked before during the budget
2 process about my desire to have a community education, a community outreach
3 component within each battalion so that we can get out into the community, that have
4 an organic capability of people that have that passion and desire to be out in the
5 community they're serving. And whether it's from a recruiting perspective or an
6 education perspective, and I think having that community-based, battalion-based is very
7 powerful. It doesn't mean that we chop off the support the organization above, the vision
8 comes from me. The vision comes down through the organization from me. But I think
9 that the battalion-based concept gets it down into the community where each of these
10 issues need to be. So that's my concern about community-based resources. And then
11 further on we talk about deployment, and really these are capacity issues. Additional
12 medic units in areas where we're not meeting response time goals, where we're not
13 able to provide a service as robust as we'd like to provide it because the units in that
14 area are constantly committed to incidents. These are the areas of the County that are
15 the busiest areas of the County, and we lack capacity. So while there's a fire station
16 down the street, often the unit that's charged with responding to that location down the
17 street's not available. And in some of these, the ones listed here, often all the units in
18 the station are not available because they're all responding to calls on a constant basis.
19 And then the response time goals, we did in fact adjust the response time proposal here
20 for two reasons, one to meet NFPA, which is a national standard. And in some cases,
21 by the way, we lessened the goals. In other words, they're not as stringent as they were.
22 In other cases, yes, we did tighten up the goals. But also we're measuring more things.
23 My concern was that we were only measuring the initial unit but in fact, in order to
24 operate on the scene effectively, two units need to assemble, yet we weren't measuring
25 the arrival of the second unit. I think that information is very important and telling and
26 important that we put in place. So that's the concept there. Then the last piece is the
27 strategic plan. Those priorities are listed in the tail end of the presentation. That's where
28 we are.

29
30 Councilmember KNAPP,

31 Great. Thank you, Chief. Mr. President, I can't see light, so --

32
33 Council President PEREZ,

34 Mr. Andrews had his light on first, then Ms. Praisner.

35
36 Councilmember ANDREWS,

37 Thank you. Well first of all, I want to thank Councilmember Knapp who's, as everyone
38 knows is the lead member for Fire and Rescue for leading us through this plan. It's a
39 very detailed plan. A lot of work went into it. Minna has worked on it very diligently and
40 Scott's worked on it continuously. It's the equivalent of the Golden Gate Bridge. Once
41 it's done, you start working on it again, right, Scott? I guess you're already thinking
42 about the next one. This is an important plan. It's the first major review of it since we've
43 had our first Chief, and I think Chief Carr has done an outstanding job already, and this
44 will enable the department, the service to continue to move forward. I do think that it is
45 critical that this Master Plan reinforce the elements of Bill 36-03 which established our



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1 current structure. I think it is essential that, and why I asked for language to be drafted
2 about maximizing training opportunities for volunteers, because I think unless we're
3 successful in maximizing training opportunities for volunteers, we will not continue to
4 have a robust volunteer component of the service eventually. I don't know when it will
5 be, but that is essential in my view to maintaining a robust volunteer component of the
6 service. We want to do everything possible to make it convenient for people who are
7 volunteering their time to get the training they are seeking to serve the department at
8 the highest level they can serve it. So I appreciate the language that you came back
9 with. I think it captures what I was hoping to do. I also want to emphasize that the title of
10 this plan includes community risk reduction. As you emphasized, Chief, sometimes
11 we're not as able to be, we're not able to focus as much on prevention because we're
12 responding to fires and emergency calls. But if we can get ahead of the curve, then
13 eventually we will have to do less on the back end because we're doing more on the
14 front end in terms of prevention. And I'm pleased that one of the requirements, or
15 elements of this plan as a recommendation, is to move forward with the retrofitting of all
16 high-rise residential buildings in the County. I think that is critical and look forward to
17 seeing the proposed regulations that I know you're working on in that area. So thank
18 you for all the good work everyone has done on this. I think it moves us forward.

19
20 Council President PEREZ,
21 Ms. Praisner?

22
23 Councilmember PRAISNER,
24 I'll try to move quickly through the changes that I have, because I know folks have other
25 places that they need to be. On Page 498, when we talk about the PSCC, I think there
26 needs to be a sentence at the end of the first full paragraph that says, "Efforts to
27 strengthen coordination and collaboration among the departments will also be ongoing."
28 And the departments that it refers to is Fire, Rescue, Police, Homeland Security, and
29 DPWT. Right now we have four departments, I guess three departments, function
30 departments, sharing that building. I'm not sure they are collaborating to the extent they
31 should be, to wit three separate refrigerators as a symbol of that lack of collaboration.
32 So I think we need a sentence here that urges that. The next paragraph speaks to a fire
33 station outfitted as an alternate PSE, emergency communications site would be okay for
34 Fire and Rescue but it wouldn't be large enough for the others. I was going to first
35 propose we delete that sentence, but I think it would be easier to just say, "and
36 therefore is not recommended." Which suggests that you're not recommending a
37 separate Fire and Rescue alternate site because that would be inconsistent with the
38 collaboration that we're talking about. The next change that I have is on Page 628
39 where number 69, and I guess it may be referenced elsewhere, talks about Fire and
40 Rescue Service acquiring a mobile traffic signal control system, goes on to say
41 coordinated with the other departments. I think the County should acquire a mobile
42 traffic signal control system coordinated with DFRS and the Police and DPWT. I'm not
43 sure which department should take the lead or if any department should be taking the
44 lead beyond procurement. And the final comment is on 640 where we talk about
45 information technology, and I want to thank Mr. Knapp and the Committee and the



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1 department for allowing me the luxury of spending significant time on information
2 technology and communications especially. I appreciate all that you allowed me to
3 provide and the way in which you took my suggestions. My comment here relates to the
4 sentence about the IT plan addressing effective sharing. It's the last full sentence in that
5 last full paragraph 100 that says, "the plan, the IT plan must address effective sharing of
6 information among all Fire Rescue Service elements and between MCFRS and other
7 County departments/agencies, jurisdictions within COG." I would add then after that,
8 "other Maryland counties." Unless you have that language, you are not considering
9 Howard County. And for Burtonsville 15 and others, if you're not talking with and
10 coordinating with Howard County, you aren't providing the communication and safety
11 since Howard County is not part of COG nor is Anne Arundel County when you get near
12 the Laurel area, you're in Anne Arundel County, likely to be as much as you are in
13 Howard or Prince Georges. That would accommodate my concerns. I think the other
14 comment I would make is this moves on and goes further than the last plan. I think we
15 should acknowledge former Councilmember Betty Ann Krahne's desire to have the
16 Fire Service have these kinds of plans. I wish that all departments of County
17 government, whether they are fire, police, libraries, recreation, et cetera, had the kind of
18 comprehensive strategic plans. The ability to implement them all will obviously be a
19 budgetary function, and the capacity to do that will be one of prioritization across
20 departments. But if you don't have this plan to begin with, as the cheshire cat said to
21 Alice, any road will do, and we need to know what road to take. Thank you, Chief Carr,
22 and your department for all the work and the volunteers who I hope participated in this
23 as well.

24
25 Council President PEREZ,

26 Thank you, Chief Carr, again. Thank you, Councilmember Knapp, for leading us through
27 this process. I think this is an important document and we're very grateful to everyone
28 and we're grateful to the community output that we received throughout.

29
30 Councilmember KNAPP,

31 I just wanted to also extend my appreciation to Chief Carr and Chief Love and to Scott
32 because Scott gave us lots of looks every time we came up with different proposals
33 because I know how much time he put into it. Every time we made a change that meant
34 he had to go back and make those modifications. So thank you for your willingness to
35 participate.

36
37 Council President PEREZ,

38 All those in favor? Unanimous. And again, we keep making remarkable progress here in
39 bringing the Fire and Rescue Service together. Thank you for your leadership, Chief
40 Carr. The bar is very high as a result of your leadership.

41
42
43 Good afternoon, ladies and gentlemen, this is a public hearing on spending control
44 limits that the Montgomery and Prince George's County Councils must set for the FY '06
45 budget of the Washington Suburban Sanitary Commission. The process requires the



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1 Council set annual ceilings on WSSC's new debt, debt service, water and sewer
2 operation expenses and the maximum average rate increase. Action is tentatively set
3 for October 18th, 2005. Persons wishing to submit additional testimony for the Council's
4 consideration should do so by the close of business Wednesday, October 12th. There
5 are no speakers for this hearing. Agenda Item Number 15 is a public hearing on
6 Expedited Bill 27-05, Forest Conservation Penalties which would repeal a limit on
7 certain penalties for non-compliance of the Forest Conservation law and generally
8 amend the enforcement provisions of the Forest Conservation law. Transportation and
9 Environment Committee work session is set for November the 10th. Persons wishing to
10 submit additional information for the Council's consideration should do so by the close
11 of business, October the 21st. We have five speakers for this hearing. Kathryn Nelson,
12 from the Planning Board, Joan Clymon, from Chris Van Hollen's office, Ann Ambler,
13 Sierra Club, Meredith Lathberry. Come on up if you're here. I see some. And Jane
14 Barnes. Joan? How are you? Kathryn Nelson. You may begin.

15
16 Katherine Nelson,

17 Thank you. I'm Katherine Nelson, representing the Planning Board this afternoon. First
18 of all, we'd like to say that we appreciate the initiative of the Council and Mr. Silverman
19 for moving this Bill forward. The Planning Board has been concerned over this issue of
20 the administrative civil penalty and believe that it is worthy of Council's attention. Along
21 with my testimony, I'm submitting a Staff report that went before the Planning Board
22 yesterday. In developing a new maximum civil administrative penalty, the Planning
23 Board would like to emphasize a few points. They would like to continue to tie the fee in
24 lieu with the maximum administrative civil penalty. Right now there's a three to one ratio
25 between those two fees. They recommend that there be a two-tiered approach to
26 assigning penalties that maintains the current three to one ratio. The Planning Board
27 recommends that the in lieu fee be approximately tripled from 30 cents to approximately
28 90 cents. Maintaining that ratio bring the maximum penalty to \$3. For the second tier,
29 that would become also tripled to about \$9. This would be for violations that are
30 particularly egregious, such as those that take place on public land or in publicly held
31 conservation easements. Also consider adding an inflation factor to the in lieu fees and
32 penalties so that we would not have to come back year after year as fees would
33 increase. Also consider revising the factors used for assigning penalties that would give
34 more specific direction to this wider penalty range of \$3 to \$9 so that we could
35 accurately assign penalties that would reflect the type of violation. Also consider
36 assessing not only the size of the forest violation, the size by square foot, but also the
37 type or the quality of forest removed, and that could be factored into the penalty. Also
38 the Planning Board feels that there are other items that need to be addressed either
39 with this item or quite soon thereafter because they are all tied together. One is revise
40 the criteria for afforestation to reflect current standards and practices, and also remove
41 the grandfathering provision exempting properties that were subdivided between 1984
42 and 1992. We look forward to working with your Staff to come up with more specific
43 recommendations.

44
45 Joan Kleinman



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1 My name is Joan Kleinman. And I'm pleased to be here on behalf of Congressman
2 Chris Van Hollen. As you may know, since the tree cutting on Daniel Snyder's property
3 last winter, became public last winter, Congressman Van Hollen has been very involved
4 with this issue and would need to take action that will preserve and protect the C&O
5 Canal National Historic Park for future generations. After meeting with constituents and
6 with representatives from the National Park Service, the Congressman hosted a public
7 town hall meeting in June in which several hundred members of the community came,
8 so that interested members of the community could raise issues and ask questions of
9 representatives from the National Park Service, Maryland National Capital Park and
10 Planning, Audubon, Potomac Conservancy, National Parks Conservation Association,
11 and the West Montgomery County Citizens Association. Shortly after that meeting,
12 Congressman Van Hollen formed a task force now known as the C&O Canal
13 Stewardship Task Force to consider changes that would increase protection of park
14 resources. The Task Force consists of elected officials from the Montgomery County
15 Council, thank you, Councilmember Denis, and the Maryland General Assembly, as well
16 as representatives from the National Park Service, Park and Planning, several local,
17 civic, and environmental groups, homeowners who hold scenic easements, and
18 interested members of the public. Among its objectives, in addition to considering
19 changes at the state and federal levels, is to make recommendations to strengthen the
20 County's Forest Conservation law. Although the Task Force as a whole has not yet fully
21 considered an issue that's recommendations on the County law, you will in fact be
22 hearing today from several people who participate on the Task Force. The
23 Congressman is pleased that the Council has taken up this issue and is moving
24 expeditiously to pass legislation to help protect the park. The next meeting of the Task
25 Force is next Tuesday, October 18th. Anyone who is interested is welcome to attend it.
26 On our agenda is a discussion of ways to amend the law that's under consideration
27 today. If it's acceptable to the Council, we would like to send the Task Force
28 recommendations on appropriate amendments to the Council for when it next considers
29 this legislation. I appreciate this opportunity to speak on behalf of the Congressman. He
30 looks forward to continuing to work with you to safeguard the natural resources
31 protected by the Forest Conservation Act.

32
33 Ann Ambler,

34 Good afternoon. My name is Ann Ambler, I'm speaking on behalf of the more than 6300
35 members of the Sierra Club in Montgomery County, a national non-profit organization
36 dedicated to promoting the responsible use of the earth's ecosystems and resources. A
37 cartoon on my frig shows woodland creatures surveying a large stump. "I used to sing in
38 its strong branches," says the bird. "I raised my kids in its mighty trunk," laments the
39 squirrel. "I would rest in his broad shade," pines the rabbit. Another bird arrives with
40 good news. "Hey, I hear they're replanting trees." The final panel shows them all looking
41 sadly at the tiny replacement shoot which never in their lifetime, nor ours, will provide
42 the services they lost when the forest was destroyed. We're currently reeling from the
43 egregious violation at Swain's Lock on the canal and the paltry \$37,000 penalty which
44 was the maximum that could be imposed. Clearly, updated more appropriate penalties
45 are needed, and we're grateful to the County for acting promptly. We also appreciate



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1 the Planning Board's insights for more than a decade of experience with the law. The
2 Sierra Club's context is the reality that what the County, the region, and the
3 Chesapeake Bay really need when mature forest must be cleared, is replacement of the
4 lost biomass. Considering the impracticality of planting enough saplings to immediately
5 replace this biomass, the priority must be conservation. And if that is not possible on a
6 given site, then in lieu fees must fully compensate for the current loss. They must fully
7 cover the cost to replant. So, number one, we agree with removing the penalty level
8 from the law as long as a penalty setting resolution is passed simultaneously. The
9 consequences of a lag in passage of the penalties are totally unacceptable. Number
10 two, we agree with the Planning Board that the in lieu fee should be raised, but rather
11 than fixing the price just under the next round dollar, a common sales tactic to make
12 prices appear smaller, we would fix it at the obvious and easy to compute \$1 per square
13 foot. Three, we concur with the Planning Board's two-tiered approach, but we believe
14 the penalties must be more than a cost of doing business. They must be heavy enough
15 to influence people accustomed to dealing with large sums of money. We therefore
16 propose an administrative penalty scale beginning at \$5 per square foot and rising to
17 \$15 per square foot for egregious violations such as clearing on a conservation
18 easement or a stream buffer. To serve as an effective deterrent, the penalties must be
19 prominently displayed, not buried in confusing language. If penalty levels are set by
20 resolution separate from the law itself, a link must be created so that anyone consulting
21 the law cannot fail to find the penalties. The penalties resolution must include a
22 mechanism to adjust for inflation. Finally, we welcome a comprehensive review of the
23 Forest Conservation law to see whether, after more than a decade of operation, it is
24 meeting its stated goals and what changes must be made to address the continuing
25 problem of forest loss. Thank you for the opportunity to comment.

26
27 Council President PEREZ

28 Thank you.
29

30 Meredith Lathbury

31 Good afternoon. My name is Meredith Lathbury, I'm Vice President for Conservation
32 and General Counsel of the Potomac Conservancy. The Potomac Conservancy is a
33 regional non-profit organization dedicated to the health, beauty, and enjoyment of the
34 Potomac River and its tributaries. I want to thank you, also, for your leadership and your
35 attention to this very important issue. The Potomac Conservancy is very pleased to be
36 serving on the Task Force that Joan mentioned. We want to urge you to consider doing
37 action on this particular issue at this time and to really dig into some of the issues that
38 were raised by the County Planning Commission and to consider input from the public.
39 And this will prevent a gap in the County's ability to penalize violations that may be
40 happening right now so that they can penalize violators beyond the state-set minimum.
41 As you're aware, Montgomery County real estate prices have been increasingly going
42 up. The natural areas along the C&O Canal and National Historical Park are highly
43 threatened and there's been a high turnover of properties resulting in a dramatic change
44 in the culture among the landowners. And the cost of doing business to develop a
45 particular piece of property or redevelop a piece of property, which we're seeing a lot of



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1 in this area, may include just simply paying a small fee to the County in order to be able
2 to cut down trees that are very critical to the quality of life in Montgomery County. And
3 so I want to encourage you to really look at the full range of options, potentially criminal
4 penalties for willful violators. Certainly they are out there. And absolutely increase
5 monetary penalties for those who are violating the County's laws. So again, we urge you
6 to consider the full range of issues and really appreciate your leadership on this issue.
7 Thank you.

8
9 Council President PEREZ,
10 Thank you. Last but not least.

11
12 Ginny Barnes,
13 Thank you. Before I begin, I want to note that, for the purposes of this hearing, I'm also
14 representing the 4,000 members of the Audubon Naturalists Society, but my testimony
15 is on the stationery of the West Montgomery County Citizens Association of which I am
16 the current President. I'm also very proud to serve on the Canal Task Force, and I really
17 appreciate Mr. Van Hollen's leadership in creating it and your involvement. Before I
18 start, I would like to provide you with some statistics from your own County Web site.
19 This is from your Forest Conservation Strategy, which is beautiful. I just looked at it
20 today. And it says that we've all witnessed the rapid loss of forest from 143,000 acres in
21 1973 to 89,000 acres today, and that the Maryland Forest Conservation law adopted in
22 1991 has not stemmed the loss of trees in Montgomery County. Each year, over 200
23 acres of upland forest alone is cleared. That's not a very good success rate. So with
24 those statistics, let me say that legislation to increase penalties under the Forest
25 Conservation law is long overdue. We applaud the Council initiative and welcome the
26 opportunity to comment. We support the action of the Planning Board yesterday to take
27 a tiered approach to both penalties and fee in lieu of payments. In raising the outdated
28 administrative penalties, it seems reasonable to also raise the fee in lieu since it now
29 costs more to plant forest. The Planning Board rightly identifies that there should also
30 be a third tier for the most egregious violations, and this highest level needs to reflect an
31 increase so large it acts as a virtual no trespassing sign to anyone considering cutting
32 stands of our shrinking forest. As to the size of monetary increases, I did a little math.
33 The Planning Board, using a trebling concept, has identified a 90-cent per square foot
34 fee in lieu, a \$3 per square foot for administrative civil penalties, and a \$9 per square
35 foot for the maximum administrative civil penalty. That's the egregious ones. In extreme
36 situations, at \$9 a square foot, it amounts to \$392,040 for an acre of land per acre. May
37 I finish? At \$3 a square foot, that's 130,680 cents. That's not very high given the times
38 we live in, the price of land, and the loss of forest. So we believe that whatever
39 monetary outcome is chosen, one major point has to be kept to and that is that the final
40 numbers for administrative civil penalties must very clearly be the no trespassing sign.
41 They have to be out in front, clear, everyone knows what they are and violators will be
42 tempted not to trespass. Since our goal is not just to penalize violators, it's to protect
43 and create forest, that seems to be an appropriate way to look at it. So I'd do the
44 numbers yourself and see what seems appropriate. Thank you.



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1 Council President PEREZ,
2 Thank you. Ms. Floreen.

3
4 Councilmember FLOREEN,
5 Thank you. Joan, I was not familiar with the Congressman's activities in this area so I
6 think that's great, and I compliment him. What do you see as the federal resources that
7 can be brought to the table in this subject?

8
9 Joan Kleinman
10 Unfortunately in this political environment --

11
12 Councilmember FLOREEN,
13 That would be government.

14
15 Joan Kleinman
16 The federal government in particular. We are going to work on obtaining some possible
17 earmarked funds to help National Park Service in some very specific respects, but that's
18 a little bit down the road. In the interim, we have been pleased to be able to facilitate
19 cooperation that previously hadn't existed between the National Park Service and the
20 Maryland National Capital Park and Planning people. There had been, unfortunately, a
21 lack of communication, and a number of people feel that if there had been regular
22 interaction perhaps what happened with Mr. Snyder's property might have been
23 avoided. They have, in fact, recently exchanged keys to the gate so the County can
24 obtain access to federal property. We're working on it. The Task Force hopefully will
25 come up with recommendations for the state, County and federal levels by the end of
26 this calendar year.

27
28 Councilmember FLOREEN,
29 I mean, are you looking at things like easement programs or something? I mean the
30 Snyder situation did involve private property but it was adjacent to federal property.

31
32 Joan Kleinman
33 Correct. So the National--

34
35 Councilmember FLOREEN,
36 Are you looking at things that would effect the role of the federal government here?

37
38 Joan Kleinman
39 The National Park Service would like to be able to strengthen the easements on the
40 private property. And there is, the federal law protects the easement to some extent, the
41 County law protects it more. Increasing the protections of federal law I think will be a
42 very difficult and long-term goal. The National Park Service would like to be able to
43 expand its program of renegotiating the easements with the private landowners, and
44 some of them have in fact expressed an interest in doing so. That also, it's a long
45 process, but it's something that's underway.



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1
2 Councilmember FLOREEN,
3 In that matter, was there federal easement involved?

4
5 Joan Kleinman
6 In the Snyder property, yes.

7
8 Councilmember FLOREEN,
9 And what is the Park Service doing about that? Was there violation of that?

10
11 Joan Kleinman
12 The federal easement was not as broad as the County easement. The federal
13 easement was not, to my understanding, violated, the County protections were.

14
15 Councilmember FLOREEN,
16 It's not much of an easement.

17
18 Joan Kleinman
19 It's not.

20
21 Katherin Nelson
22 It's a half acre.

23
24 Joan Kleinman
25 It's not, and that's why, in the public view, there was a misunderstanding about the role
26 of the National Park Service. Unfortunately, there wasn't a lot the National Park Service
27 could do, but it did, in this particular case, have a representation from the homeowner
28 that he was in compliance with County law, and, in fact, he wasn't.

29
30 Ann Ambler,
31 That would fall in egregious, I think.

32
33 Joan Kleinman
34 That would.

35
36 Councilmember FLOREEN,
37 When we get this in Committee, I'm not 100% sure of what date this session really will
38 be. Can we get some information, Katherine, as to how many properties are subject to
39 forest conservation easements? I mean there are a load. I don't know if you have that
40 information, but if you do, I think it would be helpful along with the current guidelines,
41 what you can and cannot do there. Just for background. Thank you.

42
43 Council President PEREZ,
44 Mr. Silverman?



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1 Councilmember SILVERMAN,

2 Thank you, Mr. President. I want to thank all of you for coming out to testify. A couple
3 things first of all. Certainly, it isn't my intention, wasn't my intention to suggest there
4 would be any gap. This was supposed to be seamless, and we can certainly do a
5 resolution at the same time that we make these changes. The second thing is,
6 appreciate your suggestions and any further comments that you may have to the
7 Committee or the Council about some numbers. And, Ginny, I completely agree with
8 you. There has got to be a number out there that is high enough to act as a deterrent
9 even to the Dan Snyders of the world. I'm not sure what that number is, but the fact of
10 the matter is the Planning Board has the ability to go up to a number it doesn't have to
11 set it at the maximum level. And it was ludicrous to see the, I'm not sure whether it was
12 a fine or not, because the press release said it was a fine, but then Mr. Snyder said it
13 wasn't a fine. But in any event, \$37,000 is ludicrous, and I hope this is the first step in
14 looking at revisions to our Forest Conservation law to update it and look forward to your
15 participation in that. Thank you.

16
17 Council President PEREZ,

18 Fees. Fees, taxes, fines, whatever. Ms. Praisner was next and then Mr. Denis.

19
20 Councilmember PRAISNER,

21 Yes. I wanted to thank you. The packet doesn't really speak to the comment that I
22 raised about the 30 cents as well and had asked that we be able to modify that as well
23 as, and I assume the legislation as advertised allows to us do both so we can look at
24 the 30 cents at the same time. In communicating to us, at least from one of the citizens
25 in suggesting that we needed to change the 30 cents, the comment was made that the
26 urban counties of Maryland are charging more than Montgomery County, and I
27 wondered if for Committee folks could have information on what the levies are or the
28 fees are and the penalties are in other jurisdictions within the state of Maryland at this
29 point. It would be helpful for us to have that information. And I was picking up on what
30 Mr. Silverman said. I thought we should start drafting that resolution so it could be
31 introduced such that it's available to be acted on when the legislation is so we
32 demonstrate the seamlessness of this by having something in place. And since a
33 resolution can be introduced one week and acted on the next, I think, we should be able
34 to get this so that they are in harmony.

35
36 Mr. Faden

37 We can have a draft resolution in the packet for the November 10th T&E work session.

38
39 Councilmember PRAISNER,

40 Thank you.

41
42 Council President PEREZ,

43 Mr. Denis?

44
45 Councilmember DENIS,



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1 Thank you, Mr. President. Very happy to be a co-sponsor of this legislation as I believe
2 there's a crying need for additional penalties for illegal deforestation. The penalties must
3 be high enough to be a real deterrent. There must be teeth in the law. I'm honored to sit
4 on Congressman Van Hollen's C&O Canal stewardship Task Force that was created in
5 the wake of the Dan Snyder case in Potomac. This Task Force has been working to
6 identify administrative and legal changes that would help prevent a similar case from
7 ever happening again. Clearly, one of the options this group is considering is significant
8 increases in the fines. This legislation seeks to accomplish the goal and it must be
9 carefully constructed to ensure that we address the concerns that have been expressed
10 here today. We need to ensure that we wind up taking a big step forward. I'm confident
11 we will. I'm sure the issues will be addressed as the Transportation and Environment
12 Committee chaired by my seatmate, Ms. Floreen, and then the full Council work through
13 the particulars of the legislation. Thank you to all the witnesses.

14
15 Council President PEREZ,

16 Thank you. I see no other questions. Thank you to all for coming in on this gloomy day.

17
18 Katherine Nelson/Joan Kleinman

19 Thank you.

20
21 Council President PEREZ,

22 Give our best to Chairman Berlage and Congressman Van Hollen. Agenda Item 16.
23 This is a public hearing on a Supplemental Appropriation to the FY '06 Operating
24 Budget of the Sheriff's Office for Grants to Encourage Arrest Policies and Enforcement
25 of Protective Orders in the amount of \$321,720. Action is set for October 18th. Persons
26 wishing to submit additional information for the Council's consideration should do so by
27 October the 12th. There are no witnesses for that hearing. Agenda Item 17. This is a
28 public hearing on a Supplemental Appropriation to the '06 Capital Budget of the
29 Department of Public Works and Transportation Division of Solid Waste Service for the
30 Transfer Station and Related Ancillary Facilities in the amount of \$3,250,000. A
31 Transportation and Environment Committee work session is set for October 27th.
32 Persons wishing to submit additional information should do so by COB October the
33 18th. I believe there are no witnesses for that hearing. This is a public hearing. Agenda
34 Item 18 on a Supplemental Appropriation to the FY '06 Budget of the Montgomery
35 County Fire and Rescue Service for the Travilah Fire Station in the amount of
36 \$3,346,000. Action is scheduled following the hearing. There are no speakers for this
37 hearing and so we will move to action. I guess I'll turn to you, Mr. Andrews.

38
39 Councilmember ANDREWS,

40 Thank you. This is a measure that's necessary because of the size of the project. This is
41 an important facility that is needed to provide protection of the public in this part of the
42 County, and it is something we've discussed quite a bit before in the Committee and
43 we've had discussions with full Council as well about it. I think that we should move
44 forward and approve this capital budget item. It's \$3.346 million, Supplemental
45 Appropriation to the Capital Budget for the Travilah Fire Station. This will be co-located



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1 at the Public Service Training Academy, and it will provide relieve to Station 31 which is
2 a couple of miles up the road from this location and will provide first responder service
3 to the Travilah area, which is currently not close to, in Travilah and just West, it's not
4 close, really, to any station right now. It is a station that's needed to fill and ensure that
5 there are not gaps in the response coverage and that it meets our goals for response
6 time.

7
8 Council President PEREZ,
9 Okay. There was a motion, I guess.

10
11 Councilmember ANDREWS,
12 I will move.

13
14 Council President PEREZ,
15 Okay. Moved and --

16
17 Councilmember Leventhal
18 Seconded.

19
20 Council President PEREZ,
21 Seconded. Ms. Praisner.

22
23 Councilmember PRAISNER,
24 I'm sorry I was out of the room when we had the public hearing on the Solid Waste
25 Supplemental Appropriation. I just want it to become standard practice coming over
26 from OMB when the County Executive sends over a request that is not a federal or state
27 grant-supported supplemental that we know the status of fund balances when we get
28 these requests for source of funding. This is the solid waste disposal fund. What's the
29 fund balance and are we meeting the fund balance requirements within our policy when
30 we, if we take this action? On the G.O. Bonds for the Travilah Fire Station, I'm going to
31 vote for it, but I do think that in the future, we need to know the status of the G.O. Bonds
32 associated with these so that we get a sense of picture and context of what's left from a
33 standpoint of remaining funds and prioritization. Thank you.

34
35 Councilmember Andrews
36 We might have someone here who could address that. I'm not sure. Guess not. Okay.

37
38 Council President PEREZ,
39 Okay. Moved and seconded. All those in favor? Unanimous among those present. I
40 think we can retire to the sixth floor immediately. We're only 10 minutes behind on the
41 interviews for the Court of Appeals. Thank you.